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**Supreme Court of the United States**  
**Case No. 100**

No. 100

**CHAS. J. FARMER, INC. v. ALA.**  
**STATE BOARD OF EDUCATION**

**SECURITY MATTERS - OFFICE OF POLICE**  
**STATE OF ALABAMA**

**ON PETITION FOR WRIT OF HABEAS CORPUS**  
**OF CHAS. J. FARMER, INC.**

**Before the Supreme Court of the United States**

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**Supreme Court of the United States.**

No. 75-1446.

CHARGER INVESTMENTS, INC. D/B/A  
THE SQUIRE, ET AL.,  
APPELLANTS,

*v.*

GEORGE P. CORBETT, CHIEF OF POLICE,  
CITY OF REVERE, ET AL.,  
APPELLEES.

ON APPEAL FROM THE SUPERIOR COURT OF  
MASSACHUSETTS, SUFFOLK COUNTY.

**Motion to Dismiss the Appeal.**

The appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the appellants' appeal from the final judgment of the Superior Court of Suffolk County, Commonwealth of Massachusetts, after rescript of the Supreme Judicial Court of the Commonwealth of Massachusetts be dismissed on the following grounds:

(1) that such appeal does not present a substantial federal question; and (2) that said final judgment rests on an adequate non-federal basis.

**Statement.**

This is a direct appeal from the order of the Massachusetts Supreme Judicial Court made on December 3, 1975 (Appellants' Jurisdictional Statement 36). A judgment



in accordance with the order was entered on January 21, 1976, in the Suffolk Superior Court, upholding the validity of art. III of c. 13 of the Revere Revised Ordinances (§§ 13-26, 13-27, 13-28, 13-29), city of Revere, Massachusetts (Appellants' Jurisdictional Statement 23-25); and § 1-6 of the Revere Revised Ordinances as to severability and § 1-7 of said ordinance as to general penalty (Appellants' Jurisdictional Statement 32-33).

On March 11, 1974, the city council of the city of Revere, Massachusetts, passed an ordinance, Revere Revised Ordinances, c. 13, art. III, barring several enumerated activities by local liquor licensees, among these enumerated activities were included utilizing unclothed employees where alcoholic beverages are served and drunk (Appellants' Jurisdictional Statement 23-25). The appellant, Charger Investments, Inc., d/b/a The Squire, licensed under Mass. G.L. c. 138 to sell and serve alcoholic beverages to be drunk on the licensed premises and licensed under Mass. G.L. c. 140, § 183A, to provide entertainment in the eating and drinking establishment, where alcoholic beverages are sold and drunk, violated said ordinance by employing individual female dancers who disrobed so that they were nude in view of the customer-consumers of alcoholic beverages (Appellants' Jurisdictional Statement 29-30, agreed statement of facts, para. 5). Commencing on or about July 24, 1974, the city of Revere brought multiple prosecutions against the appellants for the violation of said ordinance. On August 21, 1974, the appellants filed a complaint in the Supreme Judicial Court for Suffolk County seeking injunctive relief against the appellees' enforcement of the ordinance (appellees included the police chief of the city of Revere and the city of Revere). On September 19, 1974, a single justice of the Supreme Judicial Court for Suffolk County enjoined the appellees from enforcing this ordinance against the appellants and ordered the action transferred to the Su-

perior Court for Suffolk County for speedy trial. The action was so transferred, and on November 22, 1974, the Superior Court for Suffolk County entered a judgment declaring the ordinance invalid, null and void and permanently enjoining the appellees from enforcing same against the appellants. (Appellants' Jurisdictional Statement 33-35).

The appellees filed timely notice of appeal to the Appeals Court of the Commonwealth of Massachusetts, and on March 14, 1975, the Supreme Judicial Court for the Commonwealth of Massachusetts, the state's highest court, ordered direct appellate review by it of the judgment of the Superior Court. On December 3, 1975, the Supreme Judicial Court of the Commonwealth of Massachusetts issued a rescript and opinion vacating the judgment of the Superior Court and ordering that a new judgment be entered in accordance with its opinion (Appellants' Jurisdictional Statement 46-47). The opinion, in part, set forth that art. III of c. 13 of the Revere Revised Ordinances was not invalid upon its face, without prejudice to any question which might arise in a prosecution for a particular violation of the ordinance.

The rescript was filed with the Superior Court for Suffolk County on December 31, 1975, and the Superior Court for Suffolk County entered its final judgment after rescript on January 21, 1976. On March 22, 1976, the appellants filed with the Superior Court for Suffolk County the appellants' notice of appeal to the Supreme Court of the United States and the appellants' request for certification and transmission of the record to the Supreme Court of the United States (Appellants' Jurisdictional Statement 56). The objective of the appeal to the Supreme Court of the United States basically entails the appellants' desire to enjoin the appellees from enforcing against them a municipal ordinance, namely, Revere Revised Ordinances c. 13, art. III,

which prohibits, among other things, employing or permitting any person in or on the licensed premises (where alcoholic beverages are sold, served and drunk) to appear nude (Appellants' Jurisdictional Statement 23-25).

### Argument.

The city of Revere maintains that the ordinance in question, Revere Revised Ordinances, c. 13, art. III, does not conflict with the constitutional rights of free speech or free expression and that it follows the regulations set forth in *California v. LaRue*, 409 U.S. 109, 93 S. Ct. 390 (1972), i.e., the regulations are restricted to places where alcoholic beverages are served. The constitutionality has been adjudicated by this Court in the *LaRue* case, *supra*; therefore, there is no substantial federal question presented in the appellants' Jurisdictional Statement. The appellants' appeal should be dismissed.

The decision of the Supreme Judicial Court for the Commonwealth of Massachusetts is a correct one, and its validity should be deemed controlling and final against any further appellate review. The Massachusetts Supreme Judicial Court, in the present decision, has ruled that, pursuant to the Constitution and laws of the Commonwealth of Massachusetts, the Revere City Council had the authority and power to pass this ordinance (Appellants' Jurisdictional Statement 45). The Massachusetts Supreme Judicial Court in its decision set forth the following: "The ordinance, however, is within the powers granted to the city by the Home Rule Amendment, Mass. Const. amend. art. 89, § 6, and the Home Rule Procedures Act, G.L. c. 43B, § 13, and is not on its face inconsistent with our Constitution or laws" (Appellants' Jurisdictional Statement 38).

The appellants cannot question the Massachusetts Supreme Judicial Court's final interpretation of its Common-

wealth's Constitution as to the authority of the Revere City Council to regulate entertainment where alcoholic beverages are sold. Any inconsistency of an ordinance with the Constitution or laws of the Commonwealth of Massachusetts rests with the courts of the Commonwealth in their scrutiny and interpretation of the state's Constitution and laws. The Supreme Judicial Court of the Commonwealth, the highest court in the state, failed to find any inconsistency, and such failure precipitated its finding, conferring upon the Revere City Council the power to enact the contested ordinance.

Precedent dictates that state constitutional interpretation by the highest court of the state is conclusive upon the federal Supreme Court upon writ of error to the state court. *Reinman v. Little Rock*, 237 U.S. 171, 35 S. Ct. 511 (1915), *Thomas Cusack Company v. Chicago*, 242 U.S. 526, 37 S. Ct. 190 (1917). *Reinman* and *Cusack* concurrently hold the decision of the highest court of a state that a certain municipal ordinance, challenged as repugnant to the federal Constitution, is within the scope of powers conferred by the state legislature upon a municipality, to be conclusive upon the federal Supreme Court on writ of error to the state court. *Hadacheck v. Sebastian, Chief of Police of the City of Los Angeles*, 239 U.S. 394, 36 S. Ct. 143 (1915), expands this conclusiveness upon the federal Supreme Court to encompass decisions of the highest court of a state designating municipal ordinances, asserted to violate the federal Constitution as within the city's charter powers and not forbidden by the state Constitution.

Whether certain municipal ordinances challenged as violating the federal Constitution are within the power conferred by the legislature upon a municipal corporation has been held to a question of state law, the decision of which by the highest state court is conclusive upon the federal Supreme Court on writ of error to the state court. *Atlantic*

*Coast Line Railroad Company v. Goldsboro, North Carolina*, 232 U.S. 548, 34 S. Ct. 364 (1914). The decision in the case at bar of the Supreme Judicial Court for the Commonwealth of Massachusetts falls within the purview of the above precedents accordingly. A municipal ordinance was the issue, and its determination by the highest state court to be constitutionally sound under the state constitutional interpretation should cease any further review.

We respectfully submit, therefore, that the appellants present no substantial federal question, and their appeal is on a judgment which rests on an adequate, non-federal basis. The appellants' request for review should be dismissed, and the final judgment of the Superior Court for the Commonwealth of Massachusetts after rescript of the Supreme Judicial Court should be affirmed.

Respectfully submitted,

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